

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, MUMBAI**

**REGIONAL BENCH - COURT NO. I**

**Customs Appeal No. 85824 of 2021**

(Arising out of Order-in-Original No. 54/2020-21 dated 25.03.2021 passed by the Principal Commissioner of Customs (General), Mumbai)

**M/s Yash Logisys**

**.... Appellant**

E-603, Kamla Vihar Society, Mahavir Nagar,  
Kandivali (W), Mumbai-400 067.

Versus

**Principal Commissioner of Customs (General), .... Respondent**  
**Mumbai**

New Custom House, Ballard Estate,  
Mumbai-400001.

Appearance:

Shri O. P. Khanduja, Advocate for the Appellant

Shri Manoj Kumar, Authorized Representative for the Respondent

**CORAM:**

**HON'BLE MR. S.K. MOHANTY, MEMBER (JUDICIAL)**

**HON'BLE MR. P. ANJANI KUMAR, MEMBER (TECHNICAL)**

**FINAL ORDER NO. A/85727 / 2022**

Date of Hearing: 14.03.2022

Date of Decision: 24.08.2022

**Per: S.K. MOHANTY**

The appellants M/s Yash Logisys are custom broker. On the basis of an intelligence received that one Shri Hardik Shah was importing consignment of Whey Proteins and was undervaluing the same, various premises were searched and in that context the statement of proprietor of appellant custom broker Shri Nikunj Mehta were recorded. On completion of investigation, Department proceeded, *inter alia*, against the appellant alleging that the appellants have failed to discharge their obligations as per Regulation 10(d), 10(e) and 10(m) of Custom Broker Regulation, 2018. The license of custom broker was suspended vide order no. 43/2020-21 dated 18.02.2021 and personal hearing was granted on 26.02.2021 and it was alleged that the custom broker was

aware of manipulation by Shri Hardik Shah, Principal Commissioner Customs (General), New Custom House, Mumbai-I vide order dated 25.03.2021 has suspended the customs broker license issued to the appellants. Hence, the appellant filed this appeal.

2. Learned Counsel for the appellants submits that the proceedings are in violation of the Provisions of Customs Act, 1962 and the principles of natural justice; Commissioner did not examine the persons even when the statements made were retracted; Commissioner did not allow cross-examination of co-accused; copy of the offence report was not given; Commissioner had failed to adhere to mandatory time schedule prescribed for every stage of proceedings, under CBLR, 2018 and CBEC's Circular dated 08.04.2010; the impugned case does not warrant immediate action like suspension on merits; there is no evidence documentary or otherwise to show that the appellant has involved himself in the undervaluation by the importer.

3. Learned Counsel further submits that in the impugned issue, along with him another custom broker at Mundra was also involved; however, Commissioner of Customs, Kandla vide Order-in-Original dated 08.04.2021 had revoked the suspension of custom broker's license. He submits that in comparison to the custom broker at Kandla who has filed 84 bills of entry on behalf of the importer, the appellant has filed only 12 bills of entry; the differential treatment meted out to the appellant is not justified. He further submits that vide letter dated 05.05.2021 Commissioner appointed an inquiry officer under regulation 17(1) of CBLR, 2018; however, Commissioner had not appointed any presenting officer; in terms of the provisions of CBLR, 2018, Commissioner required to issue show cause notice within 90 days from date of receipt of the offence report; in the instant case the notice was received by the appellant after 121 days and inquiry is yet to commence even after a lapse of more than 300 days. He submits that because of the high handed action of the Commissioner around 10 employees of the appellant custom broker are suffering as the operation has come to a halt.

4. Learned Authorized Representative appearing for the Department reiterates the findings of the Order-in-Original.

5. Heard both sides and perused the records of the case.

6. On going through the records of the case, we find that in the instant case the appellant is accused of having the knowledge of the undervaluation committed by the importer and that he has not kept the Department informed and thus they have violated provisions of Regulations 10(d), 10(e) and 10(m) of CBLR, 2018. We find that order of suspension was issued after about a year of recording of the statement of the accused. We find that action like suspension needs to be immediate and any delay, in this regard, would give an impression that the action was not warranted. In this case, the Department has not shown any case of urgency to suspend the license of the custom broker.

7. Moreover, we find that the suspension of license of a custom broker, placed on a similar footing, alleged to have involved in the same offence committed by the importer at Mundra, has been revoked. We find that justice demands that when the allegations are common, action taken should be similar. We find that differential treatment meted out to the detriments of the appellants appears to be as a result of prejudice.

8. We find that the appellants have also submitted that principles of natural justice have been violated and time line for issuance of show cause notice under CBLR, 2018 have not been followed. On these two issues, we find that principles governing the implementation of Customs Act may not be equated to the provisions under CBLR, 2018 although CBLR, 2018 flows from the Customs Act, 1962. We find that the custom broker is bestowed with certain facilities as well as responsibilities, as far as customs clearance is concerned. We find that High Court have interpreted, the provisions regarding the issuance of show cause notice within 90 days of the receipt of offence report, differentially while some High Courts have held that the time line is mandatory, somehow held that it is only directionary. However, we are

not going into the merits of the case and limit our concern to the issue of suspension of license only.

9. As per our discussions above, we find that it is the case of the appellant that copy of the offence report/information against the appellant was not provided; suspension was ordered after lapse of around one year; while the custom broker at Kandla was allowed, by revoking the suspension, to continue his business, the appellant has been met to suffer. We find that the Department has not made out any case for suspension of the custom broker license, as we could see that the action was too much delayed and therefore does not display any urgency. Moreover, we find that serious injustice was done to the appellant in comparison with the custom broker at Mundra. For this reasons, we find that the impugned order is not sustainable.

10. In the result, the impugned order is set aside and the suspension of the appellant-custom broker's license is revoked.

(Order pronounced in the open court on 24/08/2022)

**(S. K. Mohanty)**  
**Member(Judicial)**

**(P. Anjani Kumar)**  
**Member (Technical)**